

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAYMOND WALTON,

CV F 05 219 AWI SMS P

Plaintiff,

**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND (Doc. 1)**

V.

**ORDER DIRECTING CLERK OF COURT TO
SEND PLAINTIFF BLANK CIVIL RIGHTS
FORM**

T. VO, M.D., A. YIN, M.D.,

Defendants.

Raymond Walton (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

A. SCREENING STANDARD

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a

1 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

2 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
3 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
4 support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding,
5 467 U.S. 69, 73 (1984), *citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); see also Palmer v.
6 Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
7 complaint under this standard, the court must accept as true the allegations of the complaint in
8 question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the
9 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor.
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

11 **B. SUMMARY OF COMPLAINT**

12 Plaintiff states that he has blisters on his feet and cannot wear the state issued boots.

13 Plaintiff states he has been to the medical clinic four times and has received no treatment.

14 **C. CLAIMS FOR RELIEF**

15 *1. Linkage Requirement*

16 The Civil Rights Act under which this action was filed provides:

17 Every person who, under color of [state law] . . . subjects, or causes
18 to be subjected, any citizen of the United States . . . to the
deprivation of any rights, privileges, or immunities secured by the
19 Constitution . . . shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

20 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
21 the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
22 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
23 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
24 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
25 in another’s affirmative acts or omits to perform an act which he is legally required to do that
26 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
27 Cir. 1978). In order to state a claim for relief under section 1983, the plaintiff must link each
28 named defendant with some affirmative act or omission that demonstrates a violation of

1 plaintiff's federal rights.

2 ***2. Eighth Amendment***

3 A prisoner's claim of inadequate medical care does not constitute cruel and unusual punishment
4 unless the mistreatment rises to the level of "deliberate indifference to serious medical needs."
5 Estelle v. Gamble, 429 U.S. 97, 106 (1976). The "deliberate indifference" standard involves an
6 objective and a subjective prong. First, the alleged deprivation must be, in objective terms,
7 "sufficiently serious." Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing Wilson v. Seiter, 501
8 U.S. 294, 298 (1991)). Second, the prison official must act with a "sufficiently culpable state of
9 mind," which entails more than mere negligence, but less than conduct undertaken for the very
10 purpose of causing harm. Farmer v. Brennan, 511 U.S. at 837. A prison official does not act in a
11 deliberately indifferent manner unless the official "knows of and disregards an excessive risk to
12 inmate health or safety." Id.

13 In applying this standard, the Ninth Circuit has held that before it can be said that a
14 prisoner's civil rights have been abridged, "the indifference to his medical needs must be
15 substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this
16 cause of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing
17 Estelle, 429 U.S. at 105-06. "[A] complaint that a physician has been negligent in diagnosing or
18 treating a medical condition does not state a valid claim of medical mistreatment under the
19 Eighth Amendment. Medical malpractice does not become a constitutional violation merely
20 because the victim is a prisoner." Estelle v. Gamble, 429 U.S. at 106; see also Anderson v.
21 County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995); McGuckin v. Smith, 974 F.2d 1050, 1050
22 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136
23 (9th Cir. 1997) (en banc). Even gross negligence is insufficient to establish deliberate
24 indifference to serious medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir.
25 1990).

26 In this case, Plaintiff does not allege sufficient facts to give rise to an Eighth Amendment
27 claim against any of the named Defendants. Plaintiff names two Defendants in the action but he
28 only states that he has not received treatment. Plaintiff's allegations are vague and conclusory.

1 The Court will grant Plaintiff the opportunity to cure this defect should Plaintiff choose to.

2 **D. CONCLUSION**

3 The Court finds that Plaintiff's complaint does not contain any claims upon which relief
4 can be granted under § 1983 against any of the Defendants. The Court will provide Plaintiff with
5 time to file an Amended Complaint curing the deficiencies identified above should he wish to do
6 so.

7 Plaintiff must demonstrate in the Amended Complaint how the conditions complained of
8 resulted in a deprivation of his constitutional rights. See, Ellis v. Cassidy, 625 F.2d 227 (9th Cir.
9 1980). The Amended Complaint must specifically state how each Defendant is involved.
10 Further, there can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
11 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423,
12 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
13 F.2d 740, 743 (9th Cir. 1978).

14 Finally, Plaintiff is advised that Local Rule 15-220 requires that an Amended Complaint
15 be complete in itself without reference to any prior pleading. As a general rule, an Amended
16 Complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
17 1967). Once an Amended Complaint is filed, the original Complaint no longer serves any
18 function in the case. Therefore, in an Amended Complaint, as in an original Complaint, each
19 claim and the involvement of each defendant must be sufficiently alleged. The Amended
20 Complaint should be clearly and boldly titled "AMENDED COMPLAINT," reference the
21 appropriate case number, and be an original signed under penalty of perjury.

22 **E. ORDER**

23 The Court HEREBY ORDERS:

- 24 1. The Clerk of Court is DIRECTED to SEND Plaintiff a blank civil rights
25 complaint form;
- 26 2. The Complaint is DISMISSED with leave to amend. WITHIN THIRTY (30) days
27 from the date of service of this order, Plaintiff SHALL:
 - 28 a. File an Amended Complaint curing the deficiencies identified by the Court

in this Order, or

b. Notify the Court in writing that he does not wish to file an Amended Complaint and pursue the action but instead wishes to voluntary dismiss the case.

Plaintiff is forewarned that his failure to comply with this Order may result in a

Recommendation that the Complaint be dismissed pursuant to Local Rule 11-110.

IT IS SO ORDERED.

Dated: October 4, 2006
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE